

Michigan Civil Service Commission

# REGULATION

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<b>Issued By:</b>  Compensation	<b>Rule Reference:</b> Rules: 2-11 (Leave of Absence with Pay) 2-12 (Leave of Absence without Pay) 2-13 (Waived Rights Leave of Absence)		<b>Replaces:</b>  Reg. 2.03 (CS-6974, May 10, 2002)
<b>Authority:</b> Regulations are issued by the State Personnel Director under authority granted in the Michigan Constitution and the Michigan Civil Service Commission Rules. Regulations are subordinate to the Commission Rules.			
<b>Subject:</b>  <b>LEAVES OF ABSENCE</b>			

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## 1. PURPOSE

This regulation sets forth standards for approval and administration of FMLA leaves, leaves of absence with and without pay, and waived rights leaves of absence.

## 2. CIVIL SERVICE COMMISSION RULE REFERENCE

**NOTE:** This Section 2 reprints only selected Commission Rules for quick reference by the reader. Additional Rules (that are not reprinted) below may apply. The complete, current version of the Rules can be found at [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs).

**Rule 2-11 Leave of Absence with Pay****2-11.1 Authorization**

*An appointing authority may authorize salary payments to an employee to attend school, visit other governmental agencies, or undertake any other systematic improvement of the knowledge or skills required in the employee's work. Salary payments may be in whole or in part.*

**2-11.2 Administrative Leave**

*An appointing authority may grant administrative leave with pay for necessary absence from duty for which annual, sick, or other leave with pay is not applicable. Additionally, the appointing authority must grant administrative leave when specifically required by the civil service commission.*

**2-11.3 Disaster Response Leave with Pay**

*An appointing authority may grant a leave of absence with pay for up to 10 workdays in a 12-month period to an employee to provide volunteer specialized disaster relief services within or outside this state, if the following conditions have been met:*

- (a) The employee is skilled in emergency relief assistance and certified as a disaster services volunteer by the American Red Cross.*
- (b) The president or governor has declared the disaster.*
- (c) The American Red Cross has requested the services of the employee.*
- (d) If the services are to be rendered outside the state by an employee of the executive branch, the governor has approved the paid leave of absence as provided in MCL 30.411a.*

**Rule 2-12 Leave of Absence without Pay****2-12.1 Authorization****(a) Permissive leave.**

- (1) Nonmedical leave of absence.** *An appointing authority may grant an employee a nonmedical leave of absence without pay and without loss of employment status.*
- (2) Medical leave of absence.** *An appointing authority may grant a medical leave of absence without pay for up to 6 months to an eligible employee whose sick leave is exhausted. An employee is eligible for a medical leave of absence only if the employee has the equivalent of at least 6 months full-time employment at the time the leave is granted. If an employee on medical leave requests an extension before the leave expires, an appointing authority is authorized to extend the leave to a maximum of one year. Any extension of a medical leave beyond one year requires the written approval of the state personnel director.*
- (3) Disaster response leave of absence.** *An appointing authority may grant a leave of absence without pay to an employee who is skilled in emergency relief assistance and certified as a disaster services volunteer by the American Red Cross to provide disaster or emergency relief assistance in this state.*

- (b) Mandatory leave.** *An appointing authority must grant a leave of absence without pay when specifically required by the civil service commission.*

### **2-12.2 Expiration**

*A leave of absence without pay expires on the date established by the appointing authority, unless extended by the appointing authority. If an employee on a leave of absence without pay does not return to work on or before the end of the leave, the employee is separated.*

### **2-12.3 Restoration to Position**

*When an authorized leave of absence without pay expires or the appointing authority authorizes a return to work before the end of the leave, the employee is returned to work as follows:*

- (a)** *Unless subsection (b) or (c) apply, the employee is returned to the position formerly occupied or an equivalent position.*
- (b)** *If the appointing authority has demoted the employee since the beginning of the leave under rule 2-6 [Discipline] or rule 3-3 [Appointments and Job Changes], the employee is returned to a position at the classification level to which demoted and is compensated within the range of rates approved for that classification level.*
- (c)** *If the employee's position was abolished during the leave, the employee is returned to the classified service in accordance with rule 2-5 [Employment Preference].*
- (d)** *At the expiration of a medical leave of absence, if the employee is medically qualified to return to work, the employee is returned to a position as provided in subsection (a), (b), or (c), as appropriate. If the employee is not medically qualified to return to work, the employee is separated.*

### **2-12.4 Annual Leave Balance**

- (a) Retention during leave.** *An employee may choose to retain an annual leave balance during a leave of absence in accordance with the official compensation plan.*
- (b) Limitation and exception.** *Payment for annual leave due an employee who does not return from a leave of absence is at the employee's last rate of pay.*

## **Rule 2-13 Waived Rights Leave of Absence**

- (a) Approval and extension.** *An appointing authority may grant a waived rights leave of absence without pay for up to one year to an employee if the employee has the equivalent of at least 6 months full-time employment at the time the leave is granted. Any extension beyond one year requires the written approval of the state personnel director.*
- (b) Ineligible employees.** *An employee in a limited-term appointment who has not achieved status in an indefinite appointment is not eligible for a waived rights leave of absence, unless authorized in writing by the state personnel director.*
- (c) Operation.** *An employee granted a waived rights leave of absence cannot carry any annual leave balance during the leave. An employee on a waived rights leave has*

*no right to return to the position formerly occupied or to an equivalent position upon expiration of the leave. If the employee returns to the classified service before the expiration of the waived rights leave through normal selection processes, the employee is not considered to have had a break in service.*

*(d) **Separation.** If the employee does not return to the classified service before or upon the expiration of the leave, the employee is separated.*

### 3. **DEFINITIONS**

#### A. Definitions as used in this Regulation

1. **FMLA** means the federal Family and Medical Leave Act, 29 USC §§2601, et seq.
2. **FMLA leave of absence** means an approved leave of up to 12 workweeks during a 12-month period for (1) a serious health condition that makes the employee unable to perform the functions of the employee's position, (2) care for the employee's spouse, parent, or child with a serious health condition, (3) birth of a child and care for the newborn child, or (4) placement with the employee of a child for adoption or foster care.
3. **Medical leave of absence** means an approved absence, without pay, because of a serious health condition that makes the employee unable to perform the functions of the employee's position.
4. **Parental leave of absence** means an approved leave of up to 6 months for the birth or adoption of the employee's child and care of the new child.

### 4. **STANDARDS**

#### A. Leave of Absence with Pay.

1. An appointing authority may grant a leave of absence with pay for training and development, visits to other governmental agencies, and other authorized short-term absences from regular duties to improve systematically the knowledge or skills required in the employee's work.
2. A leave of absence with pay may be granted as administrative leave for necessary absences from duty when other leaves with pay are not applicable. An employee shall receive paid administrative leave in the following circumstances:
  - a. An employee summoned to jury service or subpoenaed as a witness for the people to testify related to regular job functions is granted leave. During the leave, the employee is entitled to the difference between the employee's pay for providing the service and the employee's regular rate of pay (excluding any travel allowance paid by the court) for the dates of absence. If the employee uses annual leave, the employee is not required to reimburse monies received from the courts.

- b. An employee absent from work because of closure or declared inaccessibility of the employee's work station is granted leave. The employee is paid and receives service and fringe benefit credits in accordance with regulation 5.06 [Compensation under Conditions of General Emergency].
  - c. An employee engaging in qualifying labor relations activities is granted leave and may be eligible for pay, service, or fringe benefit credits as authorized in chapters 6 and 8 of the Civil Service rules and regulations.
  - d. An employee is granted leave for any remaining regularly scheduled hours on the date of a work-incurred injury, if necessary.
  - e. An employee is granted leave for disaster relief services, consistent with the requirements of rule 2-11.3, if authorized.
3. **Payment and leave accruals during a leave of absence with pay.**
- a. An employee is paid for standard hours of work at the base rate of pay. The employee is not paid any premium, unless eligible for the premium while on approved annual or sick leave normally. Any compensation received as a result of service from another entity necessitating a leave of absence with pay is subtracted from any state payment due.
  - b. An employee receives full service credit for the number of hours the employee would have been scheduled to work.
  - c. An employee receives full fringe benefit coverage as if regularly employed.
  - d. Annual and sick leave are accrued as if the employee is working. The employee cannot accumulate annual leave in excess of the maximum allowed under rule 5-10.2.

**B. FMLA Leave of Absence.**

- 1. **Purpose.** An FMLA leave may be taken for (1) a serious health condition that makes the employee unable to perform the functions of the employee's position, (2) care for the employee's spouse, parent, or child with a serious health condition, (3) birth of a child and care for the newborn child, or (4) placement with the employee of a child for adoption or foster care.
- 2. **Eligibility.** Employees who have been employed by the State of Michigan for at least 12 months and have worked at least 1,250 hours in the previous 12-month period are eligible for an FMLA leave.
- 3. **Entitlement.** An eligible employee is entitled to a total of 12 workweeks of FMLA leave during a 12-month period. The initial 12-month period begins when FMLA leave is first taken. Subsequent 12-month periods begin when FMLA leave is taken after completing the previous 12-month period.
- 4. **No Waiver of Immunity.** This regulation is not a waiver of immunity of the State of Michigan under the Eleventh Amendment to the U.S. Constitution.

**5. Use of Paid Leave.**

- a. An eligible employee who is placed on an FMLA leave based on the employee's serious health condition must exhaust any sick leave before continuing on any unpaid FMLA leave.
- b. An eligible employee who is placed on an FMLA leave to care for a spouse, parent, or child must reduce any sick leave balance to 80 or fewer hours before continuing on any unpaid FMLA leave.
- c. An eligible employee who is placed on an FMLA leave may elect to use any other accumulated paid leave credits for the leave.
- d. A period when an employee uses annual or sick leave counts toward the employee's 12-workweek FMLA entitlement. If an appointing authority approves the use of banked leave time, deferred hours, or compensatory time for an otherwise FMLA-qualifying absence, that time is not counted against the 12-week FMLA entitlement.

**6. Pay Status.**

- a. If paid leave is used, the FMLA leave is paid with the employee receiving pay, service credit, and fringe benefits.
- b. If paid leave is not used, the FMLA leave is unpaid, but the employee may continue current medical, dental, and vision plan benefits during the leave if the employee continues to pay the employee's share of premiums. No leave or service credit is accrued during an unpaid FMLA leave of absence.

**7. Scheduling.**

- a. **Consecutive.** A single FMLA leave may not exceed 12 consecutive workweeks.
- b. **Cumulative.** During any 12-month entitlement period, an eligible employee's cumulative FMLA leaves cannot exceed 12 workweeks.
- c. **Intermittent.**
  - (1) An employee may request an intermittent FMLA leave in writing. An appointing authority must grant intermittent leave or a reduced work schedule when medically necessary for a serious health condition of the employee or employee's spouse, parent, or child. The appointing authority may grant intermittent leaves or reduced work schedules after the birth or qualifying placement of a child.
  - (2) An intermittent leave cannot exceed a total of 12 workweeks during a 12-month entitlement period.
  - (3) Only the amount of leave actually taken, when compared to the employee's normal work schedule, counts toward the 12-workweek entitlement. The intermittent leave entitlement for employees who normally work less than full time is prorated.

- (4) If an eligible employee requests an intermittent leave or a reduced work schedule based on foreseeable planned medical treatment, the appointing authority may require the employee to transfer temporarily to an alternative position for which the employee is qualified and that (1) has equivalent pay and benefits and (2) better accommodates recurring periods of leave.
8. **Requesting.** When foreseeable, employees should use the FMLA Employee Request Form (CS-1790) to request an FMLA leave. If the request is based upon the serious health condition of the employee, spouse, parent, or child, the appointing authority shall provide the employee with the Certification for Health Care Provider Form (CS-1789), which the employee must return within 15 calendar days after the request.
9. **Return.** If able to perform the essential functions of the position, an employee returning from an FMLA leave is returned to the same or an equivalent position at the same step of the salary range and resumes accumulating continuous service hours, hours toward the next salary step, and any other accumulations with no break in continuous service.
10. **Exhaustion.** After exhausting the FMLA leave entitlement, an employee may be eligible for a medical or parental leave of absence, as provided in this regulation.

### C. Leave of Absence without Pay.

#### 1. Criteria for granting.

- a. **Medical leave of absence.** An appointing authority may grant a medical leave of up to 6 months to an eligible employee with the equivalent of at least 6 months of full-time employment whose sick leave is exhausted. If an employee requests an extension before the leave expires, an appointing authority may extend the leave to a maximum of one year. An appointing authority may establish in agency work rules the frequency with which medical leaves of absence may be granted. If no such work rule is adopted, an appointing authority may grant medical leaves totaling no more than 12 months during any five-year period. An appointing authority must receive written approval from the State Personnel Director for any extension of a medical leave beyond one year. Any unpaid portion of an FMLA leave resulting from the employee's serious health condition counts as part of the medical leave.
- b. **Parental leave of absence.** An appointing authority must grant an employee with status a parental leave for up to 6 months for the birth or adoption and care for a new child during the 12 months following the birth or adoption. Any absence or leave with or without pay, including FMLA leave, used for care of a new child counts as part of the 6-month parental leave entitlement.
- c. **Unclassified appointment.** An employee appointed to an unclassified position may be granted a leave of absence for the period of service in

the unclassified position, as authorized in rule 1-9. The employee receives service credit for serving in an unclassified position upon return to the classified service.

- d. **Disaster relief.** An employee may be granted a leave of absence to perform disaster relief services, as authorized in rule 2-12.1(a)(3).
  - e. **Other.** An employee may be granted a leave of absence for further education or other appropriate nonmedical reasons.
2. **Duration.** Subject to the limitations in this section, the appointing authority has discretion to grant a leave of absence and determine its length. An employee on a leave of absence may request early termination or an extension before the leave's expiration. The granting of such requests is at the discretion of the appointing authority.
3. **Leave accruals.**
- a. An employee does not receive pay, service credit, fringe benefits, or leave accruals during the leave.
  - b. An employee may elect to be paid off for part or all of the unused annual leave balance before entering the leave. An employee may retain up to 80 hours of annual leave during the leave. The appointing authority may approve retention of any annual leave balance in excess of 80 hours. Retained annual leave accruals are available upon return from the leave, consistent with regulation 5.09 [Annual, Personal, and School and Community Participation Leave].
  - c. The employee's sick leave balance is frozen during the leave. Sick leave credits must be exhausted before any unpaid medical leave.
  - d. The employee's banked leave and deferred hours are frozen during the leave and are available upon return from the leave.
4. **Return.**
- a. **Generally.** Except as provided in subsection b, an employee returning to duty after a leave of absence without pay is returned to the classified position last occupied or an equivalent position. The employee is returned at the same salary or step of the salary range and starts to accumulate continuous service hours, hours towards the next salary step, and any other accumulations with no break in continuous service. If the employee's position was abolished during the leave, the employee is returned in accordance with rule 2-5.
  - b. **SES or SEMAS from Unclassified Appointment.** The senior executive service (SES) or senior executive management assistant service (SEMAS) contract of an employee who occupied an SES or SEMAS position is terminated at the beginning of a leave to accept an appointment to an unclassified position. On return to the classified service, the employee is not entitled to return to the former SES or



SEMAS position and the employee's future status is determined as provided in rule 4-6.2(g) or 4-7.2(g).

5. **Leave Payoffs.** An employee who separates from the state service directly from a leave is paid for unused leave balances in accordance with applicable rules and regulations, including rule 5-10 and regulations 5.02, 5.09, and 5.10.

**D. Military Leave of Absence.**

A career classified employee shall receive a military leave of absence for service in the uniformed services, consistent with federal law, rule 2-14, and regulation 2.04 [Military Leaves of Absence and Return to Work: Basic Rights]. Detailed information on supplemental pay, insurance coverage, seniority, and return to work rights are in rule 2-14 and regulation 2.04.

**E. Waived Rights Leave of Absence.**

1. An employee who terminates state employment may be granted a waived rights leave of absence by the appointing authority of up to one year to protect the employee's continuous service, seniority, and any benefits connected with length of service. An appointing authority may extend a waived rights leave up to one additional year upon providing written notice to the State Personnel Director. The State Personnel Director must approve any further extension in writing.
2. An employee on a waived rights leave does not accrue annual, sick, or other leave.
3. An employee cannot carry any annual leave balance or deferred hour credits forward and is paid off for any annual leave balance and deferred hour credits at the start of the leave at the last received rate of pay.
4. The employee's sick and banked leave balances are frozen during the waived rights leave.
5. The agency is not required to return the employee to a position in the classified service during or upon expiration of the waived rights leave.
6. At any time during the waived rights leave, the employee may seek reemployment with the original agency or another agency. If successful, the employee is treated as if returning from a regular leave of absence without pay.
7. If an employee is not returned to the classified service by the end of the leave, the employee is separated and any sick and banked leave balances are liquidated in accordance with rule 5-10.3 [Banked Leave Time Program] and regulation 5.10 [Sick Leave].

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## **CONTACT**

Questions regarding this regulation should be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at (517) 335-7862, (517) 373-7618, or 1-800-788-1766; or by e-mail to [MDCS-BHRS@michigan.gov](mailto:MDCS-BHRS@michigan.gov).

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